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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/802,905

03/17/2004

Alan Sturt

1-74608

5305

27377

7590

05/31/2005

MACMILLAN, SOBANSKI & TODD, LLC  
ONE MARITIME PLAZA-FOURTH FLOOR  
720 WATER STREET  
TOLEDO, OH 43604

EXAMINER

STERLING, AMY JO

ART UNIT

PAPER NUMBER

3632

DATE MAILED: 05/31/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/802,905

Applicant(s)

STURT, ALAN

Examiner

Amy J. Sterling

Art Unit

3632

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 17 March 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-18, 21 and 22 is/are pending in the application.
- 4a) Of the above claim(s) 9-15 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8, 16-18, 21, 22 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 17 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 3/14/04.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

### **DETAILED ACTION**

This is the first Office Action for application number 10/802,905 Adjustable Beverage Holder, filed on 3/17/04. Claims 1-18, 21 and 22 are pending.

### ***Election/Restrictions***

Claims 9-15 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected species, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on 3/17/05.

### ***Information Disclosure Statement***

The information disclosure statement submitted on 3/17/04 is in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statement has been considered by the examiner.

### ***Claim Objections***

Claim 3 is objected to because of the following informalities:

Claim 2 recites that the "contact surfaces move vertically" and claim 3 recites that the contact surfaced move vertically upwardly". The term "vertically" is redundant in claim 3 and should be removed. Appropriate correction is required.

***Claim Rejections - 35 USC § 112***

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The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claim 21 is rejected under 35 U.S.C. 112, first paragraph, as based on a disclosure which is not enabling. Critical or essential to the practice of the invention, but not included in the claim(s) is not enabled by the disclosure. See *In re Mayhew*, 527 F.2d 1229, 188 USPQ 356 (CCPA 1976). Claim 21 recites a “curved screw flight slideably engaged with said actuating mechanism”. The specification does not adequately disclose how the curved screw flight slides, but teaches that the flight is rotatably mounted and not slideable. Also, the specification does not adequately teach a “screw” or how the device behaves as a screw.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 21 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 21 recites a “screw” and it is unclear how the device is a screw.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

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(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-8, 16-18, 21 and 22 are rejected under 35 U.S.C. 102(e) as being anticipated by United States Patent Publication No. 2003/0062458 to Leopold et al.

The Publication to Leopold discloses a housing (24) having a vertical axis and a support surface (12), and plurality of adjacent and pivotally mounted leaf members (26) vertically upwardly movably mounted relative to the housing (24) each leaf member having a contact surface (ends of leaf members), wherein the leaf members are substantially simultaneously movable between a first position wherein the leaf members define a substantially horizontal surface and a second position wherein the contact surfaces are caused to move vertically upwardly to a acute angle relative to the first position, the contact surfaces which are caused to move relatively away from one another to a greater distance from one another. Leopold also discloses a curved flight screw actuating mechanism (20) operatively connected to the leaf members and moving the leaf members between positions and slideably and rotatably mounted.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

The following documents show various article holding devices

6749167 to Kaupp et al.

5839711 t Bieck et al.

5782448 to Withun et al.

5697593 to Bieck

5603477 to Deutsch

Any inquiry concerning this communication should be directed to Amy J. Sterling at telephone number 571-272-6823. The examiner can normally be reached (Mon-Fri 8am-5:00pm). If attempts to reach the examiner are unsuccessful, the examiner's supervisor, Leslie Braun can be reached at 571-272-6815. The fax machine number for the Technology center is 703-872-9306 (formal amendments), informal amendments or communications 571-273-6823. Any inquiry of a general nature or relating to the status of this application should be directed to the Technology Center receptionist at 571-272-3600.

AJS  
Amy J. Sterling  
5/19/05

  
ANITA KING  
PRIMARY EXAMINER